

Harold Gurewitz
Margaret Sind Raben

Duc H Nguyen
EPA Suspension and Debarment Official
Office Of Administration and Resources management
United States Environmental Protection Agency
Washington, Dc 20460

Re: Notice of Suspension
Nancy Peeler, EPA Case No. 16-0841-03A

Dear Mr. Nguyen

I write to you as counsel for Nancy Peeler to contest your Notice of Suspension dated January 17, 2017. Ms. Peeler received it on January 22, 2017

According to your Notice, you have suspended Ms. Peeler "from participation in federal contracts and assistance activities" based on information in the Action Referral Memorandum (ARM) to which you refer in your letter. The ARM includes a criminal complaint that has been filed in 67th Judicial District Court in Michigan on July 29, 2016 by Special Michigan Attorney General Todd Flood.

Your Notice also states that suspension is warranted under 2 C.F.R. § 180.700(a) "because the criminal information constitutes adequate evidence to suspect offenses under 2 C.F.R. § 180.800(a)(4);" and, because the alleged "misconduct" described in the ARM "indicates a lack of business integrity or business honesty that seriously and directly affects Respondent's present responsibility." Finally, you conclude that there is "adequate evidence to support the suspension action under 2 C.F.R. §§ 180.700(a), (b) and (c).

Ms. Peeler contests your Action because there is not adequate evidence on which to conclude that Ms. Peeler was a "public official," principal or participant within the meaning of statutes and regulations involved, that she violated any duty established for the positions she held, or that she "committed irregularities which seriously reflect on the propriety of further Federal Government dealings with [her]." 2 C.F.R. § 180.715 (b)(3) More particularly, her reasons are as follows:

1. The state court criminal charges to which your Notice refers are only that - charges. Although the Complaint was filed on July 29, 2016, the date for a Preliminary Examination has been adjourned at the request of the prosecutor. The current date for the

Examination is April 3, 2017. (Attachment A)

2. Michigan law requires a Preliminary Examination for the felony offenses charged in Counts 1 and 2 of the Complaint. The prosecution is required to present evidence at a Preliminary Examination to prove there is probable cause to believe the felonies have been committed. MCL 766.1, *et seq.* The Preliminary Examination “helps to satisfy the constitutional requirement that the defendant ‘be informed of the nature of the accusation’ against him. *People v. Hunt*, 442 Mich 359, 362 (1993)
3. The Complaint is not the same as an indictment. It is not the result of a grand jury process and a determination of probable cause to support the allegations made by an independent deliberative body as referred to in 2 C.F.R. §180.700. (“...the suspending official may impose suspension only when that official determines that – (a) There exists **an indictment** for, or other adequate evidence to suspect, an offense listed under § 180.800(b) through (d);”) (emphasis added). The Complaint is based only on the allegations of the prosecutor.
4. There is no conviction or civil judgment of any kind finding that Ms. Peeler has committed any act that warrants suspension.
5. The evidence referred to in the ARM does not show that Ms. Peeler is or was a “public official” within the meaning of the Michigan statutes cited in the Complaint, or within the meaning of 2 C.F.R § 1532.995(h) (“ Individuals that serve in positions of public trust”); or that she was a “participant” or “principal” in a covered transaction within the meaning of the CFR as stated at Paragraph 7 of the Request for Immediate Suspension (RIS) dated January 3, 2017.
6. Michigan courts require five indispensable elements to be proved by competent evidence to establish that an individual is a “public official” within the meaning of the statutes cited in the Complaint. The five factors are referred to as the *Coutu* factors. *People v. Coutu*, 459 Mich 348, 357-358 (1999) They are:
 1. The position “must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature.”
 2. The position “must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public.”
 3. “[T]he powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority.”
 4. “[T]he duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body.”
 5. The position “must have some permanency and continuity, and not be only

temporary or occasional.”

459 Mich at 354; *see also*, *People v. Sledge*, 2016 Mich App LEXIS 1296 (unpublished) (holding that an Assistant Wayne County Corporation Counsel was not a public officer, as a matter of law)(Attachment B) It is our position that the evidence referred to in the in the ARM and RIS, as discussed below, does not establish that Nancy Peeler was a public official within the meaning of those factors.

7. Nancy Peeler's job title is not the "Director of the Michigan Department of Health and Human Services ("MDHHS") Program for Maternal, Infant, and Early Childhood Home Visiting as alleged in the RIS at Page 1. The RIS cites a Michigan Attorney General Press Release, July 29, 2016, at 3 for support. (The July 29, 2016 Press Release misrepresents Ms. Peeler's job title as "Director of the MDHHS Program for Maternal, Infant, and Early Childhood Home Visiting.") The Attorney General's Press Release is simply and unequivocally wrong. Her position title (since October 2015) is Section Manager, Early Childhood Health Section. (Attachment C, Organizational Chart). Ms. Peeler did serve as a grant manager or project director for an HHS grant called Maternal, Infant and Early Childhood Home Visiting, but that was not her job position.
8. Nancy Peeler is the Section Manager for the Early Childhood Health Section. (Attachment B, Organizational Chart) She has held that position since October 26, 2015. Prior to that time her position was Childhood Health Unit Manager. She held that position since July 27, 2008. Both positions are State Civil service classifications (Attachment D, Position Description)
9. The Early Childhood Health Section is a subdivision of the Michigan Department of Health and Human Services (MDHHS) Division of Family and Community Health, which in turn, is a subpart of the MDHHS Population Health & Community Services Administration. (Attachment C, Organizational Chart)
10. It is believed that the charges filed also rely on the position that Ms. Peeler was a "Section Manager," not a Director. Documents which support this position are available but may be subject to a protective order. Counsel will attempt to obtain court authorization to disclose these and others to which reference is made below which may be relevant and support Ms. Peeler's position.
11. Ms. Peeler is a state Civil Service employee. (Attachment D, Position Description)
12. Ms. Peeler's section has no responsibility for EPA funds of which she is aware. It is believed that the Grants listed on the Advanced Data Search included with the ARM, do not pertain to her section.
13. The charges against Ms. Peeler are not based on allegations of duties arising from statutes and regulations. Ms. Peeler wishes to provide additional documents to support this position subject to approval by the court.
14. The duties alleged violated in the Complaint are based on either Ms. Peeler's Civil Service Job description or the Michigan statute and regulations that establish the

Childhood Lead Protection Program her Section managed. (Attachment E, MCL 333.5474, Lead poisoning prevention program; establishment, components, report; R 325.9082, et seq., Administrative Rules for Blood Testing, reporting responsibilities) Ms. Peeler requests the opportunity to submit additional documents that may be subject to a Court Protective Order after authorization by the Court.

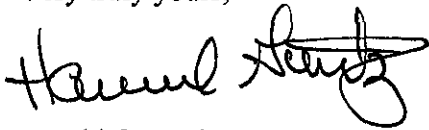
15. The Complaint allegation is that Ms. Peeler willfully and knowingly misled employees of the MDHHS "regarding reports of the increase in blood lead levels of children in Genessee County." Complaint, Count One. It is Ms. Peeler's position that the allegation is unfounded and relates only to intra-department communications. She requests the opportunity to provide additional documents to support this position subject to Court Order.

Conclusion

It is requested that additional time be permitted for Ms. Peeler to obtain approval for disclosure of additional documents and explanations based on those that may be subject to a Protective Order Pending in her case in the 67th District Court.

It is requested that upon review of this letter and the materials attached, as well as any additional materials that may be authorized for submission by the Court, that the decision to suspend Ms. Peeler be reversed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harold Gurewitz", with a stylized flourish at the end.

Harold Gurewitz
Attorney for Nancy Peeler


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67TH DISTRICT COURT

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For additional questions, please contact the Clerk's Office

STATE OF MICHIGAN	CASE NO: 16TD1685	D01 FY
JUDICIAL DISTRICT	REGISTER OF ACTIONS	
ORI250095J	STATUS: PEND	
PIN: 16-0002		

JUDGE OF RECORD: MANLEY, JENNIFER J., P-59603

JUDGE: MANLEY, JENNIFER J., P-59603

STATE OF MICHIGAN v

CTN: 961690080301

PEELER/NANCY/ANN

TCN:

4304 PARTRIDGE LANE

SID:

MIDLAND

MI 48640

ENTRY DATE: 07/29/16

OFFENSE DATE: 04/01/14

VEHICLE TYPE:

VPN:

DOB: 07/21/1962 SEX: F RACE: W

CDL: U

VEH YR:

VEH MAKE:

VIN:

PAPER PLATE:

DEFENSE ATTORNEY ADDRESS

BAR NO.

GUREWITZ, HAROLD Z.,

P-14468

333 W FORT ST

Telephone No.

STE 1400

DETROIT

MI 48226

(313) 628-4733

OFFICER:

DEPT: ATTORNEY GENERAL

PROSECUTOR: FLOOD, TODD F.,

P-58555

VICTIM/DESC: SPECIAL AGENT SEIPENKO MICH AG

COUNT 1 C/M/F: F 750505

PACC#750505

COMMON LAW OFFENSES-MISCONDUCT IN OFFICE

ARRAIGNMENT DATE: 08/01/16 PLEA:

PLEA DATE:

FINDINGS:

DISPOSITION DATE:

SENTENCING DATE:

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VEH IMMOB START DATE:			NUMBER OF DAYS:		VEH FORFEITURE:		

BOND HISTORY:

15,000.00 PERSONAL BOND SET

COUNT 2 C/M/F: F 750505-C PACC#750.505-C

COMMON LAW OFFENSES

ARRAIGNMENT DATE: 08/01/16 PLEA: PLEA DATE:

FINDINGS: DISPOSITION DATE:

SENTENCING DATE:

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JAIL SENTENCE: PROBATION:

VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

COUNT 3 C/M/F: M 750478 PACC#750.478

PUBLIC OFFICER-WILFUL NEGLECT OF DUTY

ARRAIGNMENT DATE: 08/01/16 PLEA: PLEA DATE:

FINDINGS: DISPOSITION DATE:

SENTENCING DATE:

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JAIL SENTENCE: PROBATION:

VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

NAME: PEELER/NANCY/ANN CASE NO: 16TD1685 PAGE 2

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
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2	ORIGINAL CHARGE COMMON LAW	TPS
3	ORIGINAL CHARGE OFFIC-NEGLCT	TPS
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07/29/16		
	FILING DATE 072916	TPS
1	COMPLAINT ISSUANCE DATE	TPS
	JDG PERRY, NATHANIEL C.,	P-37492 TPS
	MISCELLANEOUS ACTION ALL COUNTS	TPS
	CIRCUIT COURT JUDGE	TPS
	FULLERTON	TPS
	MISCELLANEOUS ACTION ALL COUNTS	TPS
	CODS: ADAM ROSENTHAL 16TA-1685FY	TPS
	LIANE SHEKTER-SMITH 16TB-1685FY	TPS
	PATRICK L COOK 16TC-1685FY	TPS
	ROBERT L SCOTT 16TE-1685FY	TPS
	MISCELLANEOUS ACTION ALL COUNTS	TPS

08/19/16
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 DEFENDENT IS ALLOWED TO LEAVE THE STATE OF CKC
 MICHIGAN FROM 08/27/16 UNTIL 09/03/16. CKC

09/07/16
 1 PROBABLE CAUSE CONFERENCE HELD
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 SCHEDULED FOR PRE-TRIAL 011817 100P MANLEY, JENNIFER J., P-59603 RT2
 SCHEDULED FOR EXAMINATION 040317 1000A MANLEY, JENNIFER J., P-59603 RT2
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 NO OBJECTION TO PROTECTION ORDER RT2

09/08/16
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09/29/16
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10/07/16
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 COURT FILE SENT TO JUDGE RT2
 STIP & ORDER FILED RT2
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 STIP & ORDER APPROVED - COPIES MAILED TO RT2
 ALL PARTIES RT2

11/16/16
 MISCELLANEOUS ACTION ALL COUNTS RT2
 INFORMATION FILED RT2
 REQ. FOR MEDIA COVERAGE RT2

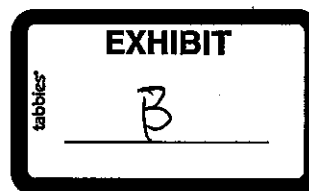
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 TO: 59603 MANLEY, JENNIFER J., RT2

NAME: PEELER/NANCY/ANN CASE NO: 16TD1685 PAGE 4

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
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	ALL COUNTS	RT2
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WESTLAW



2016 WL 3633124

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

People v. Sledge

Court of Appeals of Michigan. July 5, 2016 Not Reported in N.W.2d. 2016 WL 3633124 (Approx. 6 pages)

UNPUBLISHED

Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff–Appellee,

v.

Carla **SLEDGE**, Defendant–Appellant.

People of the State of Michigan, Plaintiff–Appellee,

v.

Steven Collins, Defendant–Appellant.

Docket Nos. 329626, 329686.

July 5, 2016.

Wayne Circuit Court; LC No. 14–008080–FH.

Before: METER, P.J., and SHAPIRO and O'BRIEN, JJ.

Opinion

PER CURIAM.

*1 In these consolidated appeals, defendants were each charged by grand jury indictment with crimes arising out of alleged misconduct in the management of the Wayne County Jail Project. During the pendency of the project, from October 2010 until June 2013, defendant Carla **Sledge** was the Chief Financial Officer (CFO) for Wayne County and defendant Steven Collins served as an Assistant Wayne County Corporation Counsel. Counts 1 and 2 of the indictment charged defendants with the common law felony offense of misconduct in office, MCL 750.505, and Counts 3 and 4 charged defendants with willful neglect of duty, MCL 750.478. Defendants moved to dismiss their respective indictments. The trial court ruled that the indictment as to **Sledge** lacked the necessary specificity and directed the prosecution to file a bill of particulars. As to Collins, the trial court concluded that he was not

a public officer, and so dismissed the charges against him. In Docket No. 329626, **Sledge** appeals by leave granted¹ the trial court's decision in her case, and in Docket No. 329686, the prosecution appeals by right the trial court's decision in Collins' case. For the reasons stated in this opinion, we affirm in Docket No. 329626, and we affirm in part and reverse in part in Docket No. 329686.

I. MISCONDUCT IN OFFICE

[Both **Sledge** and Collins were charged with the common law felony of misconduct in office. As to each, the indictment reads:

Count 1 ...: Common Law Offenses

on or between October, 2010 up to and including June, 2013, did commit an indictable offense at common law, to wit: Misconduct In Office by having a duty to fully and honestly inform a legislative body, to wit: the **Wayne County Commission**, and did intentionally testify, make statements, advise, communicate, create, and/or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the cost(s) and/or financial status of the Wayne County Consolidated Jail Project; contrary to MCL 750.505....

Count 2: Common Law Offenses

on or between October, 2010 up to and including June, 2013, did commit an indictable offense at common law, to wit: Misconduct In Office by having a duty to fully and honestly inform a legislative body, to wit: the **Wayne County Building Authority**, and did intentionally testify, make statements, advise, communicate, create, and/or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the cost(s) and/or financial status of the Wayne County Consolidated Jail Project; contrary to MCL 750.505.... [Emphasis in original.]

MCL 750.505 provides that "[a]ny person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony [.]" "The offense of misconduct in office was an indictable offense at common law." *People v. Coutu (On Remand)*, 235 Mich.App 695, 705; 599 NW2d 556 (1999). The elements of the common-law offense of misconduct in office are:

*2 (1) the person must be a public officer, (2) the conduct must be in the exercise of the duties of the office or done under the color of the office, (3) the acts were malfeasance or misfeasance, and (4) the acts must be corrupt behavior. [*People v. Carlin (On Remand)*, 239 Mich.App 49, 64; 607 NW2d 733 (1999) (citing Perkins & Boyce, Criminal Law (3d ed.), pp. 540–545).]

At common law, a public officer could be convicted of misconduct in office "(1) for committing any act which is itself wrongful, malfeasance, (2) for committing a lawful act in a wrongful manner, misfeasance, or (3) for failing to perform any act that the duties of the office require of the officer, nonfeasance." *People v. Perkins*, 468 Mich. 448, 456; 662 NW2d 727 (2003). Further, as explained in *People v. Milton*, 257 Mich.App 467, 471; 668 NW2d 387 (2003):

[C]orruption, as an element of misconduct in office, is used in the sense of depravity, perversion or taint. Pursuant to the definitions [of depravity, perversion, and taint], a corrupt intent can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer. If the acts alleged against defendants demonstrate a tainted or perverse use of the powers and privileges granted them, or a perversion of the trust placed in them by the people of this state, ... they are sufficient to sustain a charge of misconduct in office. [Citations and quotation marks omitted; alterations in original.]

A. SLEDGE

The trial court found that with regard to **Sledge**, Counts 1 and 2 of the indictment:

fail to identify the breach of duty by the defendant **Sledge** in providing financial information to the Wayne County Commission and/or [the Wayne County Building Authority] WCBA and to show that it was done with a corrupt intent and constitute misfeasance or malfeasance within the common law Misconduct of Office charge. The Indictment [fails] to document the omissions, conduct, and actions by the defendant **Sledge** that would support the Misconduct in Office.

On appeal, **Sledge** asserts that the indictment should have been dismissed because she has no specific duty to "fully and honestly inform" the Wayne County Commission or the WCBA. In response, the prosecution argues that a specific duty is not required because misconduct in office can be committed if a defendant was acting under the color of his or her office. We agree that the second element of misconduct in office does not require the prosecution to prove that defendant was exercising a duty specifically enjoined by law. Instead, it is sufficient if the defendant was exercising a duty of his or her office or was acting "under the color of the office." *Carlin (On Remand)*, 239 Mich.App at 64. Thus, we reject **Sledge's** argument that the indictment is insufficient as a matter of law because it did not allege the existence of a specific, official duty that she was required by law to perform.

*3 Nevertheless, we agree with the trial court that the indictment was deficient because it failed to identify with specificity what actions **Sledge** took or did not take that constituted misconduct in office and how those actions or inactions fall within her position's duties. Rather than dismissing the indictment as to **Sledge**, however, the trial court granted the prosecution an opportunity to cure the deficiencies by filing a bill of particulars. **Sledge** argues that allowing a bill of particulars is not permissible because the indictment was

insufficient as a matter of law. We, however, agree with the trial court that the indictment against **Sledge** can be amended or supplemented with a bill of particulars to cure the deficiency.

MCL 767.76 governs the amendment of indictments. It provides in pertinent part:

... The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been impaneled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury....

"The statute does not authorize the court to permit the changing of the offense nor the making of a new charge by way of amendment.... It permits only cure of defects in the statement of the offense which is already sufficiently charged to fairly apprise the accused and the court of its nature." *People v. Sims*, 257 Mich. 478, 481; 241 NW 247 (1932). Thus, "[a] new offense may not be added to an [indictment] by a motion to amend." *People v. McGee*, 258 Mich.App 683, 688; 672 NW2d 191 (2003).² In addition, MCL 767.75 provides that an indictment shall not be:

quashed, set aside or dismissed for any 1 or more of the following defects: (First) That there is a misjoinder of the parties accused; (Second) That there is a misjoinder of the offenses charged in the indictment, or duplicity therein; (Third) That any uncertainty exists therein. ... If the court be of the opinion that the third defect exists in any indictment, it may order that the indictment be amended to cure such defect. [Emphasis added.]

Finally, MCR 6.112 provides in pertinent part:

(E) **Bill of Particulars.** The court, on motion, may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense.

* * *

(H) **Amendment of Information.** The court before, during, or after trial may permit the prosecutor to amend the [indictment] unless the proposed amendment would unfairly surprise or prejudice the defendant.... [Emphasis in original.]

*4 In this case, it is apparent that the ordered bill of particulars does not allow the prosecution to add a new charge or offense against **Sledge**. However, it does permit the prosecution to remedy the lack of specificity as to the existing charges. With this limitation,

we find no error in the trial court's decision to permit the prosecution to file a bill of particulars. After the prosecution files its bill of particulars, **Sledge** may again challenge the sufficiency of the indictment³ at which time the trial court will better be able to assess whether the alleged misconduct occurred while **Sledge** was exercising the duties of her office or acting under the color of her office. Further, the trial court will better be able to assess whether the third element of misconduct in office, corrupt behavior, was alleged with sufficient specificity.

B. COLLINS

The trial court dismissed the misconduct in office charges against Collins after finding that as a matter of law Collins was not a public officer.⁴ The first element of the common law offense of misconduct in office is that the defendant must be a public officer. *Carlin (On Remand)*, 239 Mich.App at 64. Because Collins was not a public officer, we affirm.

In *People v. Coutu*, 459 Mich. 348, 354; 589 NW2d 458 (1999), our Supreme Court identified five elements to assist the courts in determining whether an individual is a public officer. The Court observed that to be considered a public officer, the individual's position must satisfy the following criteria:

- (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity, and not be only temporary or occasional. [*Id.* (citation and quotation marks omitted).]

The existence of "[o]ath and bond requirements" may also assist in making this determination. *Id.* at 355.

We also consider MCL 15.181 which provides statutory definitions of the terms "public officer" and "public employee." MCL 15.181(e) defines a "public officer" as "a person who is elected or appointed⁵ to any of the following:"

- (i) An office established by the state constitution of 1963.
- (ii) A public office of a city, village, township, or county in this state.
- (iii) A department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other

public entity of this state or a city, village, township, or county in this state. [Emphasis and footnote added.]

*5 MCL 750.181(d) defines the term "public employee" as "an employee of this state, an employee of a city, village, township, or county of this state, or an employee of a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or of a city, village, township, or county in this state, but does not include a person whose employment results from election or appointment."

In light of the relevant factors and the statutory definitions, we agree with the trial court's conclusion that Collins was not a public officer. The Department of Corporation Counsel was created in § 4.311 of the Wayne County Charter which provides that "[t]he director of the department is the Corporation Counsel. The director and deputy director shall be attorneys licensed to practice law in Michigan."⁶ By contrast, the position of assistant corporation council is not specifically referenced in the charter. Section 4.312 of the Wayne County Charter states that the Department of Corporation Counsel is to "provide legal services to the CEO, and all County agencies, and represent the County in all civil actions in which the County is a party," and § 4.313 permits the Wayne County Commission and CEO to "obtain the services of separate legal counsel on a temporary basis." However, the charter does not establish a permanent office of assistant corporation counsel or define qualifications, powers or duties pertaining to that office other than those that may be defined by the Corporation Counsel. Accordingly, Collins, in his role as assistant corporation counsel, is properly characterized as a public employee and not a public officer. Because he was not a public officer, the trial court did not err in dismissing the misconduct in office charges against him.

II. WILLFUL NEGLECT OF DUTY

We next address whether the trial court erred in denying **Sledge's** motion to dismiss the charges of willful neglect of duty and in granting Collins' motion to dismiss the charges of willful neglect of duty.

Counts 3 and 4 of the indictment against **Sledge** and Collins provide:

Count 3: Public Officer—Wilfull [sic] Neglect of Duty

on or between October, 2010 up to and including June, 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the **Wayne County Commission**, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances; contrary to MCL 750.478....

Count 4: Public Officer—Wilfull [sic] Neglect of Duty

on or between October, 2010 up to and including June, 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the **Wayne County Building Authority**, a duty enjoined upon him by State law and/or the Wayne County

Charter and/or Wayne County Ethics Ordinances; contrary to MCL 750.478.... [Emphasis in original.]

*6 MCL 750.478 provides:

When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, constitutes a misdemeanor[.]

Thus, the statute provides that to convict a defendant, the prosecution must establish (1) that the defendant was a public officer or "any person holding any public trust or employment," (2) that the defendant had a duty that is "enjoined by law," and (3) that the defendant willfully neglected to perform such duty. MCL 750.478.

In this case, the indictment identifies a very lengthy timeframe and wholly fails to identify what duty defendants allegedly were enjoined by law to perform. Instead, it asserts in general terms that state law, the Wayne County Charter, or the Wayne County Ethics Ordinances enjoined a duty upon defendants to fully and honestly inform the Wayne County Commission and the WCBA. There is nothing in Counts 3 and 4 that identify with any specificity what topics defendants were required to report upon, nor is it clear which portions, if any, of the cited legal authorities established the duty to report.

The trial court rightly found that, with respect to **Sledge**, the willful neglect of duty charges were deficient and it allowed for the prosecution to cure the defect by filing a bill of particulars. For the same reasons that the bill of particulars was proper with regard to the misconduct in office charges, we also conclude that the order to file a bill of particulars is proper with regard to the willful neglect of duty charges against **Sledge**.

The trial court, however, found that a bill of particulars would be unable to cure the deficiencies in willful neglect of duty charges against Collins and appeared to conclude that the charges were inapplicable to him because he was a public employee, not a public officer. We disagree. As it is written, the indictment asserts all of the requirements of the charge of willful neglect of duty. That is, it provides that Collins was enjoined by law to perform a duty and that he willfully neglected to perform said duty. What it lacks is specificity. Although the court concluded that Collins' only duty was to provide legal advice to the WCBA, without greater specificity in the indictment, it is impossible to determine whether the duty to provide legal advice was in fact breached. Accordingly, although the charges of willful neglect of duty against Collins are deficient, the prosecution should be allowed the opportunity to cure the defects in a bill of particulars.

III. CONCLUSION

We affirm the trial court's order denying **Sledge's** motion to dismiss and ordering the prosecution to file a bill of particulars. We also affirm the trial court's order granting Collins' motion to dismiss the misconduct in office charges, but reverse the trial court's dismissal of

the charges of willful neglect of duty against Collins, and remand for further proceedings. On remand, the trial court shall allow each defendant the opportunity to challenge the sufficiency of the indictment after the respective bill of particulars has been filed. We do not retain jurisdiction.

All Citations

Not Reported in N.W.2d, 2016 WL 3633124

Footnotes

- 1 *People v. Sledge*, unpublished order of the Court of Appeals, entered January 4, 2016 (Docket No. 329626).
- 2 *McGee* dealt with the amendment of an information, not an indictment. However, MCR 6.112(A) provides that the rules and laws that apply to informations also apply to indictments.
- 3 **Sledge** also asserts that Counts 1 and 2 of the indictment should have been dismissed because MCL 750.505 expressly provides that it *does not* apply if the alleged misconduct is punishable under any other Michigan statute. She asserts that to the extent that Counts 1 and 2 sufficiently allege misconduct, the misconduct is punishable under MCL 750.478 (willful neglect of duty) and MCL 750.489 (false statement of public finances). We do not reach this issue because we find that the indictment lacks specificity and that the prosecution must file a bill of particulars to provide greater specificity. However, after the prosecution has filed its bill of particulars, **Sledge** may raise this argument anew before the trial court.
- 4 The trial court found that unlike Collins, **Sledge**, in her role as CFO, was a public officer. **Sledge** did not challenge that finding on appeal, and we see no need to sua sponte address it.
- 5 [Wayne County Ordinances, § 40–3 defines an “appointed **official**” as “a **public** servant who is not elected, but rather is appointed by an elected official and holds either a compensated or uncompensated position.”]
- 6 Based on the authority of Const 1963, art 7, § 2, “[a]ny county may ... adopt ... a county charter in a manner and with powers and limitations to be provided by general law....” In accordance with 1966 PA 293, the Legislature enacted the charter counties act (CCA), MCL 45.501 *et seq.* “Every county adopting a charter under the provisions of [the CCA] shall be a body corporate.” MCL 45.501. “Wayne County adopted a home-rule charter which took effect on January 1, 1983, establishing a county government with a chief executive officer in accordance with the [CCA.]” *Lucas v. Wayne Co Election Comm*,

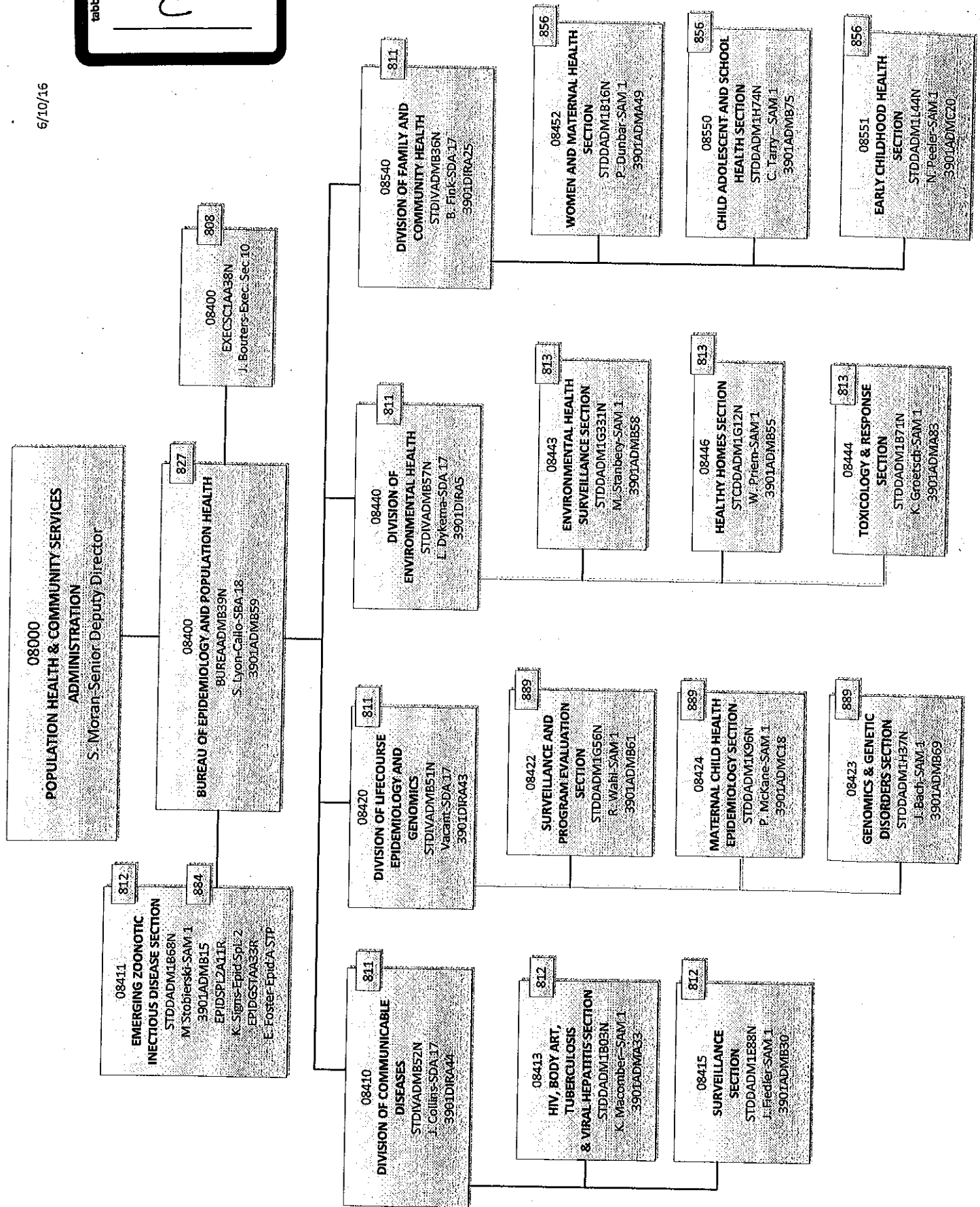
146 Mich.App 742, 744; 381 NW2d 806 (1985); see also Wayne County Charter, § 1.112.

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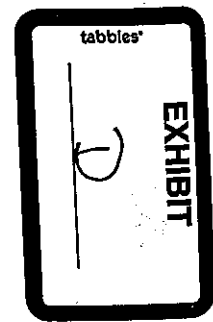
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6/10/16



MICHIGAN CIVIL SERVICE COMMISSION
JOB SPECIFICATION

STATE ADMINISTRATIVE MANAGER



JOB DESCRIPTION

Employees in this job assist in planning and directing a specialized area of the departmental mission. Under the supervision of a division or office administrator or higher level executive, the employee manages one or more agency-designated, Group 4 sections (work areas that include two or more professional employees with less than divisional or office standing), functions as an overall assistant director of a divisional or office program, or functions as a limited assistant director of a major office. The employee works within general policies and procedures and exercises considerable independent judgment in assisting in developing and implementing new approaches to departmental administration. The employee assists in the planning and directing of specific departmental activities and, in conjunction with management staff, reviews and evaluates the work of program personnel to ensure conformance with general guidelines, methods, techniques, policies, and laws. Supervisory functions include approving leaves, conducting service ratings, counseling and disciplining employees, participating in employee grievance procedures, and the hiring and training of personnel. All ECP Group 4 positions must be designated as such by the Appointing Authority and approved by Civil Service.

There are two classification levels in this job.

Position Code Title - State Administrative Manager-1

State Administrative Manager 15

The employee functions as an administrative manager of one or more agency-designated, Group 4 sections (work areas with less than division or office standing) and reports to a division, office, bureau, or senior deputy director.

Position Code Title - State Administrative Manager-2

State Administrative Manager 16

The employee functions as (1) an administrative manager of one or more agency-designated, Group 4 sections (work areas with less than division or office standing) and reports to a department director; (2) an overall assistant director of a divisional or office program; or, (3) a limited assistant director of a major office. A limited assistant is distinguished from an administrative manager by the number of sections reporting to it (3 or more) and is assigned executive assistant duties for the office director. (An office structure may not include both an overall assistant—at the 17 level—and limited assistants.)

JOB DUTIES

NOTE: The job duties listed are typical examples of the work performed by positions in this job classification. Not all duties assigned to every position are included, nor is it expected that all positions will be assigned every duty.

Plans, organizes, directs, and controls the work activities of a Group 4 program.

Formulates current and long-range programs, plans, and policies for a Group 4 program.

Coordinates work by scheduling assignments and directing the work of subordinate supervisors.

Directs the revision of rules, regulations, and procedures to meet changes in law or policy.

Develops budget recommendations for capital outlay, personnel services, equipment, and materials.

Analyzes the impact of federal, state, and local legislation, prepares position statements, and presents testimony at hearings.

Conducts staff meetings and conferences with assistants to discuss operating problems, organization, budgetary matters, personnel matters, technical problems, and the status of programs and projects.

Selects and assigns staff, ensuring equal employment opportunity in hiring and promotions, identifies staff development needs and ensures that training is obtained; ensures that proper labor relations and conditions of employment are maintained.

Confers with officials of federal, state, and local agencies, legislators, governor's aides, professional organizations, and interest groups on matters relating to the program.

Maintains records, prepares reports, and conducts correspondence relative to the work.

Performs related work as assigned.

JOB QUALIFICATIONS

Knowledge, Skills, and Abilities

Extensive knowledge of state and federal laws and legislative processes related to the work.

Extensive knowledge of federal, state, and local relationships that impact the operations of a department.

Extensive knowledge of current literature in the field.

Extensive knowledge of training and supervisory techniques.

Extensive knowledge of employee policies and procedures.

Thorough knowledge of state government organization and functions.

Thorough knowledge of the principles and techniques of administrative management including organization, planning, staffing, training, budgeting, and reporting.

Thorough knowledge of methods of planning, developing, and administering programs.

Thorough knowledge of fiscal planning and management.

Thorough knowledge of staffing requirements as to type, number, and training necessary for the accomplishment of program goals.

Thorough knowledge of labor relations and equal employment opportunity policies and procedures.

Thorough knowledge of public relations techniques.

Ability to instruct, direct, and evaluate employees.

Ability to plan, direct, and coordinate program and administrative activities of a complex, interrelated, and interdependent nature, where unknowns and numerous contingency factors are involved.

Ability to analyze and appraise facts and precedents in making administrative decisions.

Ability to formulate policies and procedures based on information of a conceptual nature from varied and complex sources.

Ability to establish and maintain effective relationships with government officials, private industry officials, professional personnel, and others.

Ability to communicate effectively.

Working Conditions

None

Physical Requirements

None

Education

Possession of a bachelor's degree in any major.

Experience

State Administrative Manager 15

Four years of professional experience, including two years equivalent to the experienced (P11) level or one year equivalent to the advanced (12) level.

State Administrative Manager 16

Five years of professional experience, including two years equivalent to a specialist or manager at the 13-level or higher.

Alternate Education and Experience

State Administrative Manager 15

Education level typically acquired through completion of high school and two years of safety and regulatory or law enforcement experience at the 14 level; or, one year of safety and regulatory or law enforcement experience at the 15 level, may be substituted for the education and experience requirements.

State Administrative Manager 16

Education level typically acquired through completion of high school and three years of safety and regulatory or law enforcement experience at the 14 level; or, two years of safety and regulatory or law enforcement experience at the 15 level, may be substituted for the education and experience requirements.

Special Requirements, Licenses, and Certifications

None

NOTE: Equivalent combinations of education and experience that provide the required knowledge, skills, and abilities will be evaluated on an individual basis.

JOB CODE, POSITION TITLES AND CODES, AND COMPENSATION INFORMATION

Job Code

DEPDIVADM

Job Code Description

STATE ADMINISTRATIVE MANAGER

Position Title

State Administrative Manager-1

Position Code

STDDADM1

State Administrative Manager-2

STDDADM2

Pay Schedule

NERE-060P

NERE-061P

JZ

12/04/2012

APPLICATIONS

Live, Work, and Play

SUBMITTED INCOMPLETE

1 Submitted

Manager 15 Applied on 09/12/2014 11:40 PM Eastern Selection Process Complete
Health Section History

ACCOUNT

WESTLAW



Michigan Compiled Laws Annotated

Chapter 333. Health

Public Health Code (Refs & Annos)

333.5474. Lead poisoning prevention program; establishment, components, report
Michigan Compiled Laws Annotated Chapter 333. Health (Approx. 2 pages)
& Annos)

Part 54a. Lead Abatement

Proposed Legislation

M.C.L.A. 333.5474

**333.5474. Lead poisoning prevention program; establishment,
components, report**

Currentness

Sec. 5474. (1) The department shall establish a lead poisoning prevention program that has the following components:

- (a) A coordinated and comprehensive plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards.
- (b) A comprehensive educational and community outreach program regarding lead poisoning prevention that shall, at a minimum, include the development of appropriate educational materials targeted to health care providers, child care providers, public schools, owners and tenants of residential dwellings, and parents of young children. These educational materials shall be made available, upon request, to local and state community groups, legal services organizations, and tenants' groups.
- (c) A technical assistance system for health care providers to assist those providers in managing cases of childhood lead poisoning. As part of this system, the department shall require that results of all blood lead level tests conducted in Michigan be reported to the department as provided for in rule and that when the department receives notice of blood lead levels above 10 micrograms per deciliter, it shall initiate contact with the local public

health department or the physician, or both, of the child whose blood lead level exceeds 10 micrograms per deciliter.

(2) The department shall report to the legislature by January 1, 1999, and annually thereafter, the number of children through age 6 who were screened for lead poisoning during the preceding fiscal year and who were confirmed to have had blood lead levels above 10 micrograms per deciliter. The report shall compare these rates with those of previous fiscal years and the department shall recommend methods for improving compliance with guidelines issued by the federal centers for disease control and prevention, including any necessary legislation or appropriations.

(3) Not more than 1 year after the effective date of this part, and annually thereafter, the department shall prepare a written report regarding the expenditures under the lead poisoning prevention program including the amounts and sources of money from the previous year and a complete accounting of its use. The report shall be given to the appropriate committees of the legislature and be made available to the general public upon request.

Credits

P.A.1978, No. 368, § 5474, added by P.A.1998, No. 219, Imd. Eff. July 1, 1998.

M. C. L. A. **333.5474**, MI ST **333.5474**

The statutes are current through P.A.2016, No. 563 of the 2016 Regular Session, 98th Legislature.

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DEPARTMENT OF COMMUNITY HEALTH

DIVISION OF FAMILY AND COMMUNITY HEALTH

BLOOD LEAD ANALYSIS REPORTING

(By authority conferred on the department of community health by 1978 PA 368, MCL 333.5111(1) and (2)(f), 333.5474(1)(c), and 333.20531; 1978 PA 312, MCL 325.72(a)(i), MCL 325.78; and Executive Reorganization Order No. 1996-1, MCL 330.3101)

R 325.9081 Definitions.

Rule 1. (1) As used in these rules:

- (a) "department" means the department of community health.
- (b) "Physician/provider" means a licensed professional who provides health care services and who is authorized to request the analysis of blood specimens. For this purpose, provider may also mean the local health department.
- (c) "Portable blood lead analyzer" means a point-of-care blood lead testing instrument or similar device used to test blood lead levels.
- (d) "User" means a physician/provider, local health department, Head Start agency, community action agency, and other agencies or individuals who utilize portable blood lead analyzers.

(2) The term "local health department," as defined in section 1105, 1978 PA 368, MCL 333.1105, has the same meaning when used in these rules.

History: 1997 AACCS; 2015 AACCS.

R 325.9082 Reportable information.

Rule 2. (1) Reportable information pertains to the analysis of blood samples submitted to clinical laboratories and the results from portable blood lead analyzers.

(2) Upon initiating a request for blood lead analysis, the physician/provider or user ordering the blood lead analysis shall collect the following information:

- (a) All of the following information with respect to the individual tested:
 - (i) Name.
 - (ii) Sex
 - (iii) The individual's ethnicity including either of the following:
 - (a) Hispanic or Latino/Latina.
 - (b) Not Hispanic or Latino/Latina.
 - (iv) The individual's race, noting the following:
 - (a) American Indian or Alaska Native.
 - (b) Asian.
 - (c) Black or African American.
 - (d) Native Hawaiian or Other Pacific Islander.
 - (e) White or Caucasian.
 - (v) Birthdate.

(vi) Address, including county, and, to the extent available, whether the residence or property is owned or rented.

(vii) Telephone number.

(viii) Social security number and Medicaid number, if applicable.

(ix) If the individual is a minor, the name of a parent or guardian.

(x) If the individual is an adult, the name of his or her employer.

(xi) A secondary contact for the individual tested or, if the individual is a minor, a secondary contact for the individual's parent or guardian, including, to the extent available, name and phone number of the secondary contact.

(b) The date of the sample collection.

(c) The type of sample (capillary or venous).

(d) The physician's/provider's or user's name, name of practice (if applicable), telephone number, fax number, email address, and mailing address.

(3) The information collected in subrule (2) of this rule shall be submitted with the sample for analysis to a clinical laboratory that performs blood lead analysis or a user of a portable blood lead analyzer.

(4) Upon receipt of the blood sample for lead analysis, the clinical laboratory or user of a portable blood lead analyzer shall collect the following additional information:

(a) The name, address, and phone number of the laboratory or testing entity.

(b) The date of analysis.

(c) The specimen number.

(d) The results of the blood lead analysis in micrograms of lead per deciliter of whole blood rounded to the nearest whole number.

History: 1997 AACCS; 2015 AACCS.

R 325.9083 Reporting responsibilities.

Rule 3. (1) All clinical laboratories and users of portable blood lead analyzers doing business in this state that analyze blood samples for lead shall report all blood lead results, rounded to the nearest whole number, for adults and children to the department electronically consistent with R 325.9084. If a result and required reportable information under R 325.9082 cannot be reported electronically within the time frame specified by this rule, then the results shall be submitted to the Michigan Department of Community Health, Childhood Lead Poisoning Prevention Program (CLPPP), 109 W. Michigan Avenue, Lansing, MI 48909 or (517) 335-8509 (facsimile). Reports shall be made to the department within 5 working days after test completion. Nothing in these rules shall prevent a person or entity required to report under these rules from reporting results to the department sooner than 5 working days.

(2) Nothing in this rule shall be construed to relieve a clinical laboratory or a user of a portable blood lead analyzer from reporting results of a blood lead analysis to the physician or other health care provider who ordered the test or to any other entity as required by state, federal, or local statutes or regulations or in accordance with accepted standard of practice, except that reporting in compliance with this rule satisfies the blood lead reporting requirements of 1978 PA 368, MCL 333.1101 to 333.25211.

History: 1997 AACCS; 2015 AACCS.

R 325.9084 Electronic communications.

Rule 4. (1) A clinical laboratory or user of a portable blood lead analyzer shall submit the data required in R 325.9082 and R 325.9083 electronically to the department.

(2) For electronic reporting, upon mutual agreement between the reporting clinical laboratory or user of a portable blood lead analyzer and the department, the reporting shall utilize the data format specifications provided by the department.

History: 1997 AACCS; 2006 AACCS; 2015 AACCS.

R 325.9085 Quality assurance.

Rule 5. For purposes of assuring the quality of submitted data, each clinical laboratory or user of a portable blood lead analyzer shall allow the department to inspect copies of the medical records that will be submitted by the clinical laboratory or user of a portable blood lead analyzer to verify the accuracy of the submitted data. Only the portion of the medical record that pertains to the blood lead testing shall be submitted. The department shall protect the medical records submitted using reasonably appropriate privacy and security safeguards regardless of whether the medical records are received by the department in electronic or hard copy form. After verification of submitted data, the department shall promptly destroy the copies of the medical records.

History: 1997 AACCS; 2015 AACCS.

R 325.9086 Confidentiality of reports.

Rule 6. (1) Except as provided in subrule (2) of this rule, the department shall maintain the confidentiality of all reports of blood lead tests submitted to the department and shall not release reports or information that may be used to directly link the information to a particular individual.

(2) The department may release reports or information, otherwise protected under subrule (1) of this rule, under any of the following conditions:

(a) If the department has received written consent from the individual, or from the individual's parent or legal guardian, requesting the release of information.

(b) If necessary for law enforcement investigation or prosecution of a property manager, housing commission, or owner of a rental unit under section 5475a, 2004 PA 434, MCL 333.5475a.

(c) If the director of the department determines that release is crucial to protect the public health against imminent threat or danger.

(d) As necessary for the department to carry out its duties under 1978 PA 368, MCL 333.1101 to 333.25211.

(e) If necessary for the purpose of research designed to develop or contribute to generalizable knowledge, with documented approval by the department's institutional review board.

(f) If necessary for the purpose of public health activities designed to prevent lead poisoning within a community.

(3) Medical and epidemiological information that is released to a legislative body shall not contain information that identifies a specific individual. Aggregate epidemiological information concerning the public health that is released to the public for informational purposes only shall not contain information that identifies a specific individual.

History: 1997 AACS; 2006 AACS; 2015 AACS.

R 325.9087 Rescinded.

History: 1997 AACS; 2015 AACS.